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## **RELEVANT BACKGROUND**

**Josephine Giaimo was a victim of threatening and abusive conduct by her estranged husband, Frank Cosenza. Josephine Giaimo took appropriate and reasonable steps to address the situation. As outlined below, and as detailed more fully in the body of this report, almost every agency and person who had professional involvement in the Giaimo/Cosenza problems could have, and should have, done more to protect Josephine Giaimo. This tragedy illustrates the critical need for comprehensive reforms in the delivery of services to victims of domestic violence and threatened domestic violence.**

- At a meeting with a private attorney on May 15, 2000, prior to her involvement with any Court or law enforcement agency, Josephine Giaimo told her attorney that her husband, Frank Cosenza,<sup>1</sup> had guns. This attorney represented Josephine Giaimo in an action for Dissolution of Marriage and assisted her in obtaining a Restraining Order on July 6, 2000.**
- On June 28, 2000, Josephine Giaimo filed two complaints with the East Haven Police Department reporting that she was being harassed by Frank Cosenza.**
- On July 6, 2000, Josephine Giaimo applied for and received an Ex Parte Restraining Order directed to Frank Cosenza. A copy of this Restraining Order was served by a deputy sheriff on Frank Cosenza and a Police Officer of the East Haven Police Department on July 7, 2000. Josephine Giaimo's private attorney prepared an affidavit for her in support of the application for a Restraining Order. This affidavit did not mention that Frank Cosenza possessed guns.**
- When the deputy sheriff informed an East Haven police officer on July 7, 2000 that Cosenza possessed guns, that officer failed to document that information and failed to investigate that information. The East Haven police officer had a copy of a Restraining Order directing Cosenza to surrender or transfer handguns within two business days of July 6, 2000.**
- On the evening of July 12, 2000, Josephine Giaimo filed a third complaint with the East Haven Police Department. Ms. Giaimo claimed that Frank Cosenza had violated the Restraining Order by confronting her and following her on two occasions on that date. Based on this complaint, Mr. Cosenza was arrested later on the same evening and charged with Breach**

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<sup>1</sup> In the course of its investigation, the OVA learned that Frank Cosenza's marriage to Josephine Giaimo was his fourth marriage. In a prior marriage, his ex-wife obtained a Restraining Order after detailing a history of being subjected to threats and assaults by Cosenza. Another ex-wife claimed in a pleading that she had been subjected to "intolerable cruelty" by Frank Cosenza. The OVA is not claiming that this information was available to police officers, Judicial personnel, the Office of the State's Attorney or the court-based victim advocate.

of Peace. Mr. Cosenza's state permit to carry pistols and revolvers was seized at that time by an East Haven Police Officer and was subsequently forwarded to the Connecticut State Police Special Licensing and Firearms Unit.

- At Cosenza's first Court Appearance on July 13, 2000, a Judge issued a full Protective Order after an Advocate from Domestic Violence Services spoke on behalf of Josephine Giaimo. On this date, Cosenza was in violation of the Ex Parte Restraining Order issued on July 6, 2000 in that he had not transferred or surrendered handguns in his possession.
- Records and documents revealed that no police officers or other officials who were involved with Josephine Giaimo ever inquired about Cosenza's possession of handguns, although such an inquiry was reasonable in light of the fact that they all knew, or should have known, that Cosenza possessed a Permit to Carry Pistols or Revolvers. Additionally, a computer inquiry by the Department of Public Safety revealed that Cosenza had a handgun registered to him since April 16, 1991. Handgun registration information is maintained by the Connecticut State Police Department and is available to all law enforcement officers.
- Frank Cosenza did not appear in Superior Court on July 19, 2000 for a scheduled hearing regarding the Restraining Order.
- On July 20, 2000, the Postal Service unsuccessfully attempted to deliver to Frank Cosenza certified mail from a State Police Detective informing him of his duty to surrender or transfer handguns in his possession. This letter was dated July 17, 2000.
- On the evening of July 20, 2000, Frank Cosenza fatally shot Josephine Giaimo with a handgun while she attended a concert on the East Haven Green. Frank Cosenza then fatally shot himself in the head with the same handgun.

## **SUMMARY OF FINDINGS**

- **Josephine Giaimo was a victim of threatening and abusive conduct by her estranged husband, Frank Cosenza. Josephine Giaimo took appropriate and reasonable steps to address the situation. Almost every agency and person who had professional involvement in the Giaimo/Cosenza problems could have, and should have, done more to protect Josephine Giaimo.**
- **The three incident reports concerning complaints made by Josephine Giaimo to the East Haven Police Department do not document any attempt to determine whether Frank Cosenza owned firearms. Such an inquiry was reasonable under the circumstances known to at least two of the three officers who responded to Josephine Giaimo's complaints. Two incident reports referenced Cosenza's "gun permit" and there was an apparent failure of officers to investigate whether Cosenza possessed handguns. An inquiry with the Department of Public Safety would have revealed that Cosenza had a handgun registered to him.**
- **A Deputy Sheriff who served a copy of the Restraining Order on a police officer at the East Haven Police Department on July 7, 2000 told the police officer that Frank Cosenza possessed guns. This information was not documented by the East Haven police officer and there was no follow-up law enforcement action based on this information.**
- **As early as July 11, 2000, a Motion for Contempt could have been filed in the civil Court by Josephine Giaimo's private attorney based on Frank Cosenza's failure to surrender or transfer handguns as ordered in the Ex Parte Restraining Order issued on July 6, 2000. No such motion was filed. On May 15, 2000, Josephine Giaimo told her private attorney that Frank Cosenza possessed guns. This information was never conveyed to the Court by this attorney.**
- **On July 13, 2000, an in-court victim advocate obtained information from Josephine Giaimo regarding Frank Cosenza's Permit to Carry Pistols and Revolvers. This victim advocate initially reported to OVA that Ms. Giaimo told her that Cosenza possessed guns. She stated that such information was included in her report to Family Relations personnel in the court. This victim advocate later "corrected" her recollection and stated that she did not ask Josephine Giaimo whether Cosenza possessed handguns and Ms. Giaimo offered no such information. She does recall (and her report confirms this recollection) that Ms. Giaimo mentioned Cosenza's gun permit. This in-court victim advocate failed to inquire about Cosenza's possession of handguns. Such an inquiry was reasonable in that the in-court victim advocate knew that Cosenza possessed a Connecticut Permit to Carry Pistols and Revolvers.**

- **The Restraining Order issued on July 6, 2000 and the Protective Order issued on July 13 both included notices of a duty to surrender a permit to carry pistols and revolvers and a duty to transfer all pistols and revolvers or surrender them to the Commissioner of Public Safety within two business days of the issuance of the orders. Frank Cosenza failed to comply with these requirements and there was inadequate follow-up to these requirements. This case exemplifies the critical need for the Commissioner of Public Safety to implement statutorily required protocol to ensure that persons who become ineligible to possess a pistol or revolver have transferred or surrendered pistols and revolvers in their possession.**
- **Records and documents revealed that no police officers or other officials who were professionally involved with Josephine Giaimo ever inquired about Cosenza's possession of handguns, although such an inquiry was reasonable in light of the fact that they all knew, or should have known, that Cosenza possessed a Permit to Carry Pistols or Revolvers. Additionally, a computer inquiry by the Department of Public Safety revealed that Cosenza had a handgun registered to him.**
- **Improvements in technology and increased staffing are needed to effectively carry out statutory mandates.**
- **P.A. 99-212, Sec. 18, should be amended to eliminate confusion and increase effectiveness of intended protection.**

## **PREFACE**

Pursuant to Connecticut General Statutes section 46a-13c, the Victim Advocate investigated the circumstances of the deaths of Josephine Giaimo and Frank Cosenza in East Haven Connecticut on July 20, 2000. The purposes of this investigation include: to evaluate the delivery of services to victims, like Josephine Giaimo, by agencies and those entities that provided services to Ms. Giaimo, or should have provided services to Ms. Giaimo; to review the procedures established by agencies and those entities that provide services to victims or should provide services to victims; to review complaints of persons concerning the actions of agencies and those entities that provide services to victims; to recommend changes in policies concerning victims and to make proposals for systemic reform. All of these purposes are statutory mandates of the Office of the Victim Advocate (OVA). (C.G.S. § 46a-13c)

In conducting its investigation, the OVA obtained and reviewed records and documents pertinent to this case, including records of the East Haven Police Department, records of the Connecticut State Police Department, records of the New Haven Superior Court in the matter of Josephine Giaimo vs. Frank Cosenza, records of the New Haven Superior Court, G.A. 8, in the matter of State vs. Frank Cosenza, records from the Office of the State's Attorney, records from Domestic Violence Services of Greater New Haven and correspondence from the New Haven Police Department. OVA personnel interviewed personnel from the above-identified entities and, additionally, interviewed relatives of the deceased victim, Josephine Giaimo, Josephine Giaimo's attorney, and a New Haven County Deputy Sheriff.

The names of individuals, with the exception of Josephine Giaimo and Frank Cosenza, have been omitted from this report and have been redacted from the documents included in the Appendix. The OVA notes publicly that it received complete cooperation in its investigation from the Connecticut State Police Department, the Office of the State's Attorney, the Judicial Branch, Domestic Violence Services of Greater New Haven, the New Haven Police Department and the New Haven County Sheriff's Department.

The specific focus of the OVA's investigation was on the victim issues set forth above. The OVA fully recognizes that what seems self-evident in retrospect may not have been so clear prior to the death of Josephine Giaimo. The death of Josephine Giaimo, however, has highlighted the need for agencies and entities that provide services to victims to implement protocol and improve safeguards in order to prevent this kind of tragedy from occurring again.

## **DISCUSSION OF ISSUES**

### **I. Police Involvement**

#### **A. East Haven Police Department:**

The discussion of the involvement of the East Haven Police Department centers on the actions (or failure to act) prior to the homicide/suicide incident. The OVA has no criticism of the conduct of officers and other emergency personnel who responded to the East Haven Green on July 20, 2000.

At 3:01 pm on June 28, 2000, Josephine Giaimo reported to an officer of the East Haven Police Department that Cosenza made harassing telephone calls to her. She further reported that Cosenza told her that he would “come over there” but did not say what, if anything, he would do. Ms. Giaimo also reported that Cosenza tried to follow her on an unspecified date. (EHPD Incident Report – Case # 00-09261).

At 11:29 pm on that same date, Josephine Giaimo reported to an officer of the East Haven Police Department that she observed Cosenza look through a window of her home. Josephine Giaimo reported that approximately five minutes later, Cosenza called her and described what she was wearing. Ms. Giaimo further reported that Cosenza frequently follows her, that he has a “handgun permit” and that “he constantly reminds her of this fact.” The East Haven police officer reported that he advised Josephine Giaimo to seek a restraining order. The officer further reported being unable to contact Cosenza. He wrote in his report that he left a message on Cosenza’s voice mail regarding the “pending restraining order.” Notwithstanding the reference in the report to Frank Cosenza’s handgun permit, the report does not include any reference to Cosenza’s ownership or possession of handguns. It also does not state whether the officer asked Josephine Giaimo about Cosenza’s ownership or possession of handguns.<sup>2</sup>

On July 7, 2000, a New Haven County Deputy Sheriff served an East Haven police officer at the East Haven Police Department with a copy of the Ex Parte Restraining Order issued by the New Haven Superior Court on July 6, 2000. The deputy sheriff stated that he served a copy of the affidavit of Josephine Giaimo along with the Ex Parte Restraining Order. The affidavit is significant in that it refers to death threats directed to Josephine Giaimo by Frank Cosenza and it also refers to the fact that Cosenza possessed a “gun permit.” Officials of the East Haven Police Department denied that a copy of the Affidavit of Josephine Giaimo was served with the copy of the Restraining Order. East Haven Police officials reported to OVA that that they first obtained a copy of the affidavit of Josephine Giaimo when a copy was found with Ms. Giaimo’s personal effects after the homicide. The “Officer’s Return of Service” and an affidavit obtained from the deputy sheriff support a conclusion that the affidavit was served on an officer at the East Haven Police Department on July 7, 2000. This

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<sup>2</sup> The victim, Josephine Giaimo, knew that Frank Cosenza possessed handguns. As detailed later in this report, she told family members and her private attorney about Cosenza’s handguns.

conclusion is further supported by a statement of a State Police official who reported that Cosenza's pistol permit was forwarded by East Haven Police to the State Police along with a copy of the incident report and the Restraining Order, including the affidavit of Josephine Giaimo. The State Police forwarded to the OVA a copy of the documents it received from East Haven Police, including the affidavit of Ms. Giaimo. The OVA was unable to explore this discrepancy further with East Haven Police officials because an attorney for the East Haven Police Department refused to allow East Haven police officers to be interviewed in connection with this investigation.

More significant is the deputy sheriff's claim that he told a police officer at the East Haven Police Department that Cosenza possessed guns. The deputy sheriff claimed that he learned of Cosenza's possession of guns in his New Haven home when he asked Cosenza about guns during the service of the Ex Parte Restraining Order. Cosenza reportedly told the deputy sheriff that he had two handguns in a box in his apartment. Again, the Officer's Return of Service" and an affidavit obtained from the deputy sheriff support this claim. The OVA was unable to explore this claim further because an attorney for the East Haven Police Department refused to allow East Haven police officers to be interviewed in connection with this investigation.

At 7:16 pm on July 12, 2000, Josephine Giaimo reported to an officer of the East Haven Police Department that Frank Cosenza had violated the Restraining Order issued on July 6, 2000 by approaching her that morning outside of a church in East Haven. The East Haven Police incident report further states that Cosenza told Josephine Giaimo that it was her fault that his gun permit was taken away.<sup>3</sup> Josephine Giaimo further reported that Cosenza had followed her in his vehicle earlier that evening. Ms. Giaimo provided the police officer with a voluntary statement and told the officer that she wanted Cosenza arrested. Frank Cosenza went to the East Haven Police Department later on the same date and surrendered to arrest. He was charged with Breach of Peace and released on a \$500.00 non-surety bond and assigned a court date for the next morning, July 13, 2000. At the time of his arrest, a police officer seized Cosenza's Permit to Carry Pistols and Revolvers. This permit was forwarded to the Commissioner of Public Safety.

The Superior Court, GA 8, issued a full Protective Order on July 13, 2000. The OVA was unable to determine whether the East Haven Police Department received a copy of this Order, or the date when it was received. On July 19, 2000, the New Haven Superior Court modified the Restraining Order. A copy of this Restraining Order was mailed to the East Haven Police Department by the Court Clerk's Office on July 21, 2000. It was received by the East Haven Police Department on July 24, 2000.

The East Haven Police Department, through its attorney, has refused to provide the OVA with copies of reports related to the Homicide/Suicide incident claiming it is an open "criminal investigation" and is, therefore, exempt from disclosure.

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<sup>3</sup> An entry dated "July 12" in the personal journal of Josephine Giaimo included the following quote: "So he wanted to know why he had to give up his **guns**." (emphasis added). The entry under that date does not mention any statement of Cosenza regarding his "gun permit" being taken away.



## Summary

- East Haven Police responded to three complaints from Josephine Giaimo between June 28, 2000 and July 6, 2000 regarding threats by Frank Cosenza. Although two of the three incident reports refer to Cosenza's "gun permits," none of the reports refer to handguns owned by Cosenza. Frank Cosenza had a handgun registered to him since April 16, 1991. The East Haven police officers responding to Josephine Giaimo's complaints could have learned that Frank Cosenza possessed handguns from the victim herself. Further, handgun registration information was available to the East Haven Police directly from the Connecticut State Police. No apparent attempt was made by these officers to obtain this critical information from either the state police or from the victim, Josephine Giaimo.
- On July 7, 2000, a deputy sheriff who served a copy of an Ex Parte Restraining Order directed to Frank Cosenza told an East Haven Police Officer within the Records Unit that Frank Cosenza possessed guns. This officer never documented this information and never initiated any follow-up investigation regarding Cosenza's duty to surrender or transfer handguns.
- On July 12, 2000, after a complaint registered by Josephine Giaimo, Frank Cosenza was arrested for violating the July 6, 2000 Restraining Order. While in the custody of the East Haven Police Department, East Haven Police Officers seized Cosenza's Permit to Carry Pistols and Revolvers because he had failed to surrender this permit within five days of the issuance of the July 6, 2000 Restraining Order. Although police were aware of Cosenza's failure to comply with one order in the Handgun Restrictions section of the Restraining Order (i.e., the failure to turn-in his gun permit), there was apparently no inquiry/investigation regarding the additional requirement to surrender or transfer handguns within two business days of July 6, 2000. Cosenza's possession of handguns on and after July 12, 2000 (eight days prior to the homicide) was a violation of the July 6, 2000 Restraining Order.

### **B. New Haven Police Department:**

Frank Cosenza lived in New Haven and, as of July 8, 2000, he illegally possessed handguns in his New Haven home. The OVA determined, however, that the New Haven Police Department received no information from any Court, from the East Haven Police Department or from the State Police Department related to the Restraining Orders or Protective Order and, therefore, had no reason to know that Cosenza illegally possessed handguns within its jurisdiction.

### **C. Connecticut State Police Department:**

The documents produced by the Connecticut State Police Department that are relevant to this report included a copy of the Restraining Order issued on July 6, 2000, including the application and the affidavit of Josephine Giaimo. The Special Licensing & Firearms Unit of the Connecticut State Police Department obtained its copy of the Restraining Order, including the affidavit of Ms. Giaimo, on or about July 14, 2000. These documents were mailed to the Connecticut State Police Department by an official of the East Haven Police Department along with Cosenza's Permit to Carry Pistols or Revolvers and a copy of the East Haven Police incident report related to the arrest of Frank Cosenza. The Special Licensing & Firearms Unit of the Connecticut State Police Department also had a copy of the Protective Order issued on July 13, 2000.

The first action apparently taken by State Police personnel was the issuance of three form letters dated July 17, 2000 by a Detective in the Special Licensing & Firearms Unit. The three letters were based on the issuance of the Protective Order on July 13, 2000 and there was apparently no separate action taken by the Special Licensing & Firearms Unit as a result of their receipt of the Restraining Order. Two of the letters were addressed to Frank Cosenza. Records produced by the Connecticut State Police Department show that attempts to deliver these letters by certified mail on July 20, 2000 and July 25, 2000 were unsuccessful and the letters were returned to the Department of Public Safety on an uncertain date after the homicide/suicide. One was a letter informing Cosenza that his Permit to Carry Pistols and Revolvers was revoked. A handwritten note on this letter informed Cosenza that his permit was already in the possession of the State Police. The other letter notified Cosenza of his duty to transfer or surrender all pistols or revolvers in his possession. The third letter was addressed to the Chief of Police at the East Haven Police Department notifying him that Cosenza's Permit to Carry Pistols or Revolvers was revoked. A computer generated document obtained by a State Police detective dated 08/08/2000 showed that Cosenza had a Smith & Wesson handgun registered to him since 04/16/91.

Other documents received from the Connecticut State Police consisted of historical information concerning Cosenza's Permit to Carry Pistols and Revolvers and his arrest history. The Connecticut State Police Department Major Crime's Squad also assisted the East Haven Police Department in the processing and collection of evidence at the scene of the homicide/suicide. The OVA did not attempt to obtain these reports, photographs, etc. as such information is not pertinent to this investigation.

### **Summary**

- The Commissioner of Public Safety receives and maintains all records regarding Permits to Carry Pistols and Revolvers, Handgun Registration and documentation regarding Surrender/Transfer of handguns. The Special Licensing and Firearms Unit of the Connecticut State Police Department received documentation regarding the issuance of Restraining and Protective Orders directed to Cosenza and failed to take adequate measures to ensure that

Cosenza surrendered or transferred his handguns within two business days, as required by both Orders.

- P.A. 99-212, Section 10, effective October 1, 1999, requires the Commissioner of Public Safety to develop a protocol to ensure that persons who become ineligible to possess a pistol or revolver have transferred such pistol or revolver to a person eligible to possess such pistol or revolver or have delivered or surrendered such pistol or revolver to said commissioner. The OVA determined that, as of August 24, 2000, the Commissioner of Public Safety had not yet taken any significant steps toward developing such protocol.

### **Conclusions and Recommendations**

Several things could have been done, and should have been done, by police personnel in the interest of the safety of Josephine Giaimo.

The incident report stemming from a complaint by Josephine Giaimo on the evening of June 28, 2000 refers to the fact that Cosenza possessed a Permit to Carry Pistols or Revolvers. The report does not indicate whether the investigating officer asked Ms. Giaimo whether Cosenza possessed handguns. This simple and logical follow-up question could have provided probable cause for police officers to apply for a search and seizure warrant for handguns if such handguns were not transferred or surrendered to the State Police Department within two business days of the issuance of the Restraining Order on July 6, 2000. Relatives of Ms. Giaimo report that Ms. Giaimo knew that Cosenza possessed handguns in his apartment and she would have provided this information to police, if asked. Ms. Giaimo's daughter and daughter-in-law provided affidavits stating that Ms. Giaimo spoke to them on several occasions about Cosenza's guns and further told them specifically where Cosenza kept his guns. Ms. Giaimo's attorney also provided an affidavit in which he stated that Ms. Giaimo informed him on May 15, 2000 that Cosenza had guns. Ms. Giaimo's repeated communication about Cosenza's guns to family members and her attorney support the conclusion that Ms. Giaimo would have provided police officers with information about Cosenza's guns, if asked.

The East Haven Police reports related to the arrest of Frank Cosenza on July 12, 2000 include several references to Cosenza's "gun permit". Again, there is no documentation of any attempt by the investigating officer to determine whether Cosenza possessed handguns. It appears, again, that the investigating officer(s) failed to ask Ms. Giaimo whether Cosenza possessed handguns. Possession of handguns on July 12, 2000 would have been in violation of the Restraining Order which required that Cosenza transfer all pistols and revolvers in his possession or surrender them to the Commissioner of Public Safety "within two business days of becoming subject to such order".

Frank Cosenza went to the East Haven Police Department on the evening of July 20, 2000 to surrender to arrest. This first face-to-face meeting between East Haven

police officers and Cosenza was an opportunity to inquire about or investigate Cosenza's possession of handguns and this opportunity was completely missed. The arrest on that date was based, at least in part, on the orders in the Restraining Order dated July 6, 2000. East Haven police officials seized Cosenza's "gun permit" at the time of his arrest pursuant to the requirement in the "Handgun Restrictions" section of the Restraining Order that required Cosenza to surrender this permit within five days of being notified that it was revoked. The very same "Handgun Restrictions" section in the Restraining Order required Cosenza to surrender or transfer all handguns in his possession within two business days of the issuance of the order. Recognition of the fact that Cosenza was in violation of one section of the Handgun Restrictions by failing to surrender his Permit to Carry Pistols should have raised concerns that he might have violated other requirements set forth in the Handgun Restrictions. Even after recognizing the Handgun Restrictions provisions of the Restraining Order and knowing that Cosenza had failed to comply with one of the requirements in the Handgun Restrictions, there is no indication that the arresting officer(s) ever asked Cosenza about possession of handguns. When asked by a deputy sheriff on July 7, 2000 if he possessed handguns, Cosenza told the deputy sheriff that he owned two handguns that were kept in a box in his apartment. There is no reason to suspect that Cosenza would have given a different response to a police officer's inquiry.

Perhaps the most significant failure on the part of East Haven Police was the failure of the officer who accepted service of a copy of the Restraining Order to document and follow-up on the deputy sheriff's verbal statement that Cosenza had guns.

An obvious and critical part of the enforcement of the Court Order to transfer or surrender pistols and revolvers is an inquiry or investigation into whether the person who is the subject of the order possesses handguns. This investigation has revealed that several East Haven Police officers who knew that Cosenza possessed a Permit to Carry Pistols or Revolvers apparently never asked the victim/complainant, Josephine Giaimo, whether Cosenza possessed handguns. Additionally, when an East Haven officer received information from a deputy sheriff concerning Cosenza's possession of guns, that officer never documented or followed-up on that information. One simple follow-up inquiry would have been a check with the Department of Public Safety to determine whether Cosenza had any handguns registered in his name. The records from the State Police file obtained by OVA show that a computerized check revealed that a 9 mm Smith & Wesson handgun was registered to Frank Cosenza since April 16, 1991. There is no evidence that East Haven police checked handgun registration records.<sup>4</sup>

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<sup>4</sup> Handgun registration information is maintained by the Connecticut State Police Special Licensing & Firearms Unit. Registration information is available by telephone inquiry to all law enforcement officers. The hours for accessing such information are Mon. through Fri., 8 am to 8 pm; Sat., 9 am to 5 pm, and: Sun., 11 am to 4 pm. Handgun registration information is scheduled to be available twenty-four hours a day in all State Police Troops beginning in November, 2000.

Information regarding Cosenza's possession of handguns would have been essential for police action to retrieve such handguns. If police officers had determined that no reasonable alternatives existed to prevent Cosenza from causing imminent personal injury to himself or to others with a firearm, they could have applied for a warrant authorizing a search of Cosenza's home or person and take into custody any and all firearms. P.A. 99-212, Sec. 18. Analysis of P.A. 99-212, Sec. 18 is provided later in this report.

This particular incident highlights critical systemic problems in the enforcement of current handgun restrictions that are intended to protect crime victims and society. It is essential that protocol be implemented to ensure that persons who become ineligible to possess a pistol or revolver have transferred or surrendered pistols and revolvers in their possession. P.A. 99-212, Section 10, effective October 1, 1999, requires the Commissioner of Public Safety to develop a protocol to ensure that persons who become ineligible to possess a pistol or revolver have, in accordance with section 29-36k of the general statutes, transferred such pistol or revolver to a person eligible to possess such pistol or revolver or have delivered or surrendered such pistol or revolver to said commissioner. The OVA determined that, as of August 24, 2000, the Commissioner of Public Safety had not yet taken any steps toward developing a protocol to ensure that persons who become ineligible to possess a pistol or revolver have transferred or surrendered pistols and revolvers in their possession, as required by P.A. 99-212, Section 10.<sup>5</sup> The OVA recommends that the Commissioner of Public Safety, without delay, develop an appropriate protocol, as required by law. Additionally, the OVA recommends that the Commissioner of Public Safety works with other appropriate governmental agencies and officials, including the OVA, during the process of developing this protocol.

The failure to have protocol to ensure that persons who become ineligible to possess a pistol or revolver have transferred or surrendered pistols and revolvers in their possession is a very serious problem which must be promptly addressed to provide the level of victim safety and public safety that the legislature intended.

Officials involved in the development of protocol should consider, at a minimum, establishment of a unit (with sufficient personnel and resources) within the State Police Department dedicated to ensuring that persons who become ineligible to possess a pistol or revolver due to the issuance of a Protective Order or a Restraining Order have transferred or surrendered pistols and revolvers in their possession. This unit should be within the State Police Department because documentation regarding transfers or surrender is filed with State Police officials. Additionally, records related to handgun permits and handgun registration are maintained by the State Police Department. Indeed, the legal authority for the requirement to transfer or surrender handguns (C.G.S. 29-36k) is in a chapter (Chapter 529) of the Connecticut General Statutes which

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<sup>5</sup> State Police officials have reportedly been working with the Judicial Branch on technology changes that will enable the State Police to receive Restraining Order information via computer. While such improvements are important, they are not an acceptable substitute for the development of appropriate protocol as required by law.

is entitled "Division of State Police". The development of such protocol should also explore ways to promptly obtain copies of all Protective Orders and Restraining Orders.

The OVA further recommends that proposals for legislative changes be introduced to the Legislature to seek changes to P.A. 99-212, Sec. 18 in order to make its application available in a broader range of situations, including situations when persons do not comply with the provisions of Restraining Orders and Protective Orders that concern handguns and Permits to Carry Pistols and Revolvers.

## **II. Involvement Of Others Who Had Professional Contact With The Victim**

### **Court-Based Victim Advocate:**

A Domestic Violence Advocate from Domestic Violence Services of Greater New Haven is based at G.A. 8 in New Haven and provides services to victims of domestic violence in criminal cases before that Court. Among the various responsibilities of this court-based victim advocate, the victim advocate routinely interviews victims and provides a written report to the Family Violence Intervention Unit of the Family Division at the Court. The court-based victim advocate in the instant matter interviewed Josephine Giaimo and an unidentified East Haven Police Officer prior to completing the report to the Family Violence Intervention Unit. The report was completed prior to the arraignment of Frank Cosenza on July 13, 2000. At the arraignment, the court-based victim advocate spoke on behalf of Josephine Giaimo and informed the Court of Ms. Giaimo's fear of Cosenza. The court-based victim advocate, however, did not inform the Court that Cosenza had a gun permit and the transcript of the proceeding confirms that there were no statements about guns.

Within the referenced report of the court-based victim advocate are references to the victim's claim that she was "terrified" of Mr. Cosenza and that he had threatened to kill her. There was also a reference to Cosenza's "gun permit".

When first interviewed by the Assistant Victim Advocate from OVA on August 1, 2000, this court-based victim advocate initially stated that Ms. Giaimo told her that Cosenza possessed guns. She also stated that the information regarding Cosenza's possession of guns was included in her report to the Family Violence Intervention Unit.

After obtaining a copy of the court-based victim advocate's report to the Family Violence Intervention Unit, the court-based victim advocate was re-interviewed on August 22, 2000. During this second interview, the court-based victim advocate "corrected" her recollection and stated that she did not ask Josephine Giaimo whether Cosenza possessed handguns and Ms. Giaimo offered no such information. Her refreshed recollection, after reviewing her report, was that Josephine Giaimo had mentioned that Cosenza was angry that his gun permit had been revoked.

This court-based victim advocate reported that she spoke to Josephine Giaimo at least twice via telephone – once before the arraignment of Cosenza and once after the arraignment. She also received voice mail messages from Josephine Giaimo and left messages for her on her answering machine. Josephine Giaimo reportedly never mentioned Cosenza's possession of guns in any of these conversations or messages.

The court-based victim advocate also reported that she left a note asking the prosecutor to "be tough" on Cosenza at the arraignment and further wrote that "the police seem to think he won't listen". This note was included in the records of the assistant state's attorney and was copied as part of this investigation.

## Summary

- Among the various responsibilities of this court-based victim advocate, the victim advocate routinely interviews victims and provides a written report to the Family Violence Intervention Unit of the Family Division and the Court. The court-based victim advocate in the instant matter interviewed Josephine Giaimo and an unidentified East Haven Police Officer prior to completing the report to the Family Violence Intervention Unit. The report was completed prior to the arraignment of Frank Cosenza on July 13, 2000. At the arraignment, the court-based victim advocate spoke on behalf of Josephine Giaimo and informed the Court of Ms. Giaimo's fear of Cosenza. The court-based victim advocate, however, failed to inform the Court that Cosenza had a gun permit and the transcript of the proceeding confirms that the court-based victim advocate made no statements to the Court about Cosenza's handguns.

## **Conclusions and Recommendations**

There is no documentation of any attempt by the court-based victim advocate to determine whether Cosenza possessed handguns and, indeed, the court-based victim advocate stated that she never asked such a question. The prosecution was based, at least in part, on the orders in the Restraining Order dated July 6, 2000. At the arraignment on July 13, 2000, the prosecutor requested and the Court issued a Full Protective Order that included the same requirement to transfer or surrender handguns as was included in the Restraining Order issued on July 6, 2000. It appears that the court-based victim advocate, like the East Haven officers involved in the arrest of Cosenza, failed to ask Josephine Giaimo the seemingly logical question about whether Cosenza possessed handguns. His possession of handguns on July 13, 2000 would have been in violation of the Restraining Order dated July 6, 2000 which required that Cosenza transfer all pistols and revolvers in his possession or surrender them to the Commissioner of Public Safety "within two business days of becoming subject to such order".

The OVA recommends that policy be implemented by the various agencies and entities that provide court-based advocacy to victims requiring advocates to question victims in domestic violence matters and any other appropriate matter as to whether the defendant possesses guns. Such policy objectives would be enhanced by changes to the report form to indicate whether such information was sought and the response that was given. Simple training or instructions to accompany these policy and form changes is also recommended.

## **Office of the State's Attorney:**

The involvement of a prosecutor in the prosecution of Frank Cosenza was limited to a single court appearance – the arraignment on July 13, 2000. The transcript



documents some appropriate comments and requests in the interest of victim safety. For example, the prosecutor informed the Court that the victim was terrified of Frank Cosenza and that the police believed that Cosenza "won't listen". The prosecutor also asked for a shorter continuance date and asked for a full protective order with a verbal admonition of no contact with the victim. The prosecutor, however, failed to inquire about Cosenza's possession of handguns.

The prosecutor also acknowledged on the record that he had not read the police report related to the arrest. The prosecutor relied on the domestic violence advocate to address the Court and provide the Court with information from the victim and from the police.

### Summary

- The prosecutor did not read the police report related to Cosenza's arrest on July 12, 2000 and, instead, relied on the court-based victim advocate to address the Court to provide information from the victim and the East Haven Police. The court-based victim advocate did not raise the issue of Cosenza's possession of handguns. If the prosecutor had read the arrest report in the instant matter, the prosecutor would have read the references to the defendant's gun permit. These references might have, and should have, prompted further remarks to the Court and an emphasis on the duty to transfer or surrender firearms as ordered in the Protective Order.
- State's attorneys and assistant state's attorneys have authority pursuant to P.A. 99-212, Sec. 18 to apply for warrants to search for firearms in the possession of persons who pose a risk of imminent personal injury to themselves or others. Reading the police report prior to the arraignment should have prompted further investigation and law enforcement action, including the procedure under 99-212, Sec. 18.

### **Conclusions and Recommendations**

The prosecutor, in every case of domestic violence, and particularly in cases that justify a request for a Protective Order, should read the police reports related to the arrest prior to the arraignment or other court proceeding. If the prosecutor had read the arrest report in the instant matter, the prosecutor would have read the references to the defendant's gun permit. These references might have, and should have, prompted further remarks to the Court and an emphasis on the duty to transfer or surrender firearms as ordered in the Protective Order. That information, coupled with the information in the police report concerning a previously issued Restraining Order, should have also prompted further investigation into whether Cosenza was in possession of firearms beyond the two business day time period to transfer or surrender such firearms.

State's attorneys and assistant state's attorneys have authority pursuant to P.A. 99-212, Sec. 18 to apply for warrants to search for firearms in the possession of persons who pose a risk of imminent personal injury to themselves or others and have authority to conduct independent investigations to determine whether probable cause exists to justify the issuance of a warrant and to establish that there is no reasonable alternative available to prevent such persons from causing imminent personal injury to themselves or others. With this authority should come a corresponding obligation to invoke the procedure in appropriate cases or to ensure that police officers, who have identical authority, have invoked the procedure in appropriate cases. Reading the police report prior to the arraignment should have prompted further investigation and law enforcement action, including the procedure under 99-212, Sec. 18, if no reasonable alternatives were available.

## **Judicial Department**

### **Judges**

#### **A. Family Court**

The risk of harm to Josephine Giaimo was first presented by Ms. Giaimo's attorney to a judge of the Family Division of the Superior Court on July 6, 2000 when an Ex Parte Restraining Order was issued. The Ex Parte Restraining Order issued by this Court included the Notice concerning the statutory duty to surrender or transfer handguns within two business days of the order.

The remedy for violation of an Ex Parte Restraining Order is a Motion for Contempt pursuant to Section 46b-15(g) of the Connecticut General Statutes. When a Motion for Contempt is filed for violation of a Restraining Order, an expedited hearing is required within five court days of service of the motion on the respondent. Id. No such motion was filed by or on behalf of Josephine Giaimo.

The failure of a person who is subject to a Restraining Order to transfer or surrender pistols or revolvers is a criminal offense only after notice and an opportunity to be heard has been provided to such person. See, Section 53a-217c(a)(5) of the Connecticut General Statutes, as amended by P.A. 99-212, Section 21. Frank Cosenza was provided an opportunity to be heard concerning the Ex Parte Restraining Order at a hearing on July 19, 2000. His continued possession of pistols and revolvers after that date was in violation of Section 53a-217c(a)(5). [Cosenza's continued possession of pistols and revolvers was a criminal violation on an earlier date – July 18, 2000 - by reason of the protective order issued in the criminal court, G.A. 8].

Frank Cosenza did not appear in Court on July 19, 2000 for the hearing on the Restraining Order. Josephine Giaimo presented a note from Cosenza to the Court at the scheduled hearing. The note stated that Cosenza would not be present at the hearing. Josephine Giaimo testified at the hearing about the content of Cosenza's note.

The two-page transcript of the hearing revealed that the Court ordered a six-month extension of the Restraining Order.

The transcript further reveals that there was no inquiry about, or mention of, any problems involving Cosenza after the date of the issuance of the Ex Parte Restraining Order on July 6, 2000. As detailed above, significant events occurred during this time period, including but not limited to the arrest of Cosenza and the seizure of his Permit to Carry Pistols and Revolvers, and these events were not called to the attention of the Court. The Court had the authority to find Cosenza in contempt of its orders and “impose such sanctions as the court deems appropriate”. C.G.S. § 46b-15(g). Because there was no inquiry by the Court regarding Cosenza’s conduct after the date of the Ex Parte Restraining Order, there was no sanction imposed that might have served the interest of victim safety.

### Summary

- The Family Court issued an Ex Parte Restraining Order on July 6, 2000. This Order included an order to surrender or transfer all handguns within two business days. Frank Cosenza, therefore, had a duty to surrender or transfer his handguns by July 10, 2000, ten days before the homicide. There was no consequence to his failure to comply with this directive.
- On July 19, 2000, the Court conducted a hearing regarding the Ex Parte Restraining Order. Frank Cosenza did not appear in Court for this hearing. One week earlier, Frank Cosenza was arrested and his Permit to Carry Pistols and Revolvers was seized by police because he had failed to surrender it as required by the Court Orders. Notwithstanding that the Court knew, or should have known, that Cosenza had failed to comply with one requirement in the Handgun Restrictions section of the Restraining Order, there was no attention paid to the requirement to surrender or transfer handguns. (Frank Cosenza had a handgun registered to him since April 16, 1991).

### B. Criminal Court

This matter first came to the attention of G.A. 8 in New Haven on July 13, 2000 following the arrest of Frank Cosenza by East Haven Police on the evening of July 12, 2000. At the arraignment, the prosecutor requested a full Protective Order and the Court granted the request.

The transcript of the Court proceeding on July 13, 2000 reveals that the Judge had read the police report. That police report, Case No. 00-10166, includes several references to Cosenza’s gun permit. The judge explained, in general terms, many of the requirements of the Protective Order but did not mention the requirement that Cosenza transfer or surrender any handguns in his possession. The judge also expressly noted the existence of a previously issued order from a civil court. The judge

made no inquiry into the terms of the previously issued Restraining Order or Cosenza's compliance with the terms of that order.

### Summary

- A Judge in the Criminal Court issued a Protective Order on July 13, 2000. This Order included an order to surrender or transfer all handguns within two business days. Frank Cosenza, therefore, had a duty to surrender or transfer his handguns by July 17, 2000, three days before the homicide. There was no consequence to his failure to comply with this directive. Furthermore, the Court expressly noted that it had read the police report which included reference of the seizure of Cosenza's "gun permit" for his failure to surrender the permit as required by the Restraining Order issued on July 6, 2000. Although this failure was noted, the Court never commented on the Handgun Restrictions included in the Protective Order.

### **Conclusions and Recommendations**

The OVA recommends that policy be developed and implemented by the Judicial Branch to draw attention to, and emphasize, the handgun restrictions for all persons subject to Restraining or Protective Orders. Such policy should include, at a minimum, express reference to the handgun restrictions during all Court proceedings related to such orders.

Judicial should also explore the feasibility of a policy requiring that Judges question persons who are subject to Restraining or Protective Orders about their possession of handgun permits and handguns.<sup>6</sup> Additionally, Judicial should implement policy to require improved communication and cooperation between a Family Court and a Criminal Court when an ongoing family violence matter involves both Courts.

The OVA further recommends that the Restraining Order forms and Protective Order forms be revised to draw attention to, and emphasize, the handgun restrictions. In the present forms, the handgun restrictions are not included in the Order section of the form and the handgun restrictions are printed on the reverse side of some of the forms.

### **Family Relations**

At each G.A. Court there is a Local Family Violence Intervention Unit of the Family Relations Division of the Superior Court. One of the functions of the Local Family Violence Intervention Unit is to "prepare written or oral reports on each case". C.G.S. § 46b-38c(c). A written or oral report of the Local Family Violence Intervention

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<sup>6</sup> The OVA recognizes that defendants might claim that such questions violate their rights under the Fifth Amendment of the Constitution of the United States and Article First, Sec. 8 of the Connecticut Constitution.

Unit shall be available to a judge . . . . “C.G.S. § 46b-38c(d). Another function of the Local Family Violence Intervention Unit is to “provide and arrange for services to victims and offenders”. C.G.S. § 46b-38c(c).

In the instant case, the OVA learned that the written report of the domestic violence victim advocate was copied to the Local Family Violence Intervention Unit. The domestic violence victim advocate reported that Frank Cosenza was interviewed by an official of the Local Family Violence Intervention Unit on July 13, 2000. The OVA was unable to obtain copies of documents from the Local Family Violence Intervention Unit due to a statutory confidentiality requirement. “All information provided to a family relations officer in a local family violence intervention unit shall be for the sole purpose of preparation of the report for each case and recommendation of services and shall otherwise be confidential and retained in the files of such unit, and not be subject to subpoena or other court process for use in any other proceeding or for any other purpose.” C.G.S. § 46b-38c(c).

The inability of the OVA to access information from the Local Family Violence Intervention Unit prevents the OVA from accurately assessing the delivery of services to victims, in general, and the delivery of services to Josephine Giaimo in particular. The OVA was not able to learn from any other source of any services offered by the Local Family Violence Intervention Unit. Likewise, the OVA was unable to determine if the Local Family Violence Intervention Unit asked Cosenza or Josephine Giaimo about Cosenza’s possession of handguns.

### **Conclusions and Recommendations**

The OVA recommends that policy be developed and implemented by the Family Relations Division of the Superior Court requiring personnel of the Local Family Violence Intervention Units to specifically inquire about the defendants’ possession of handgun permits and possession of handguns in every interview of defendants and victims in cases in which a Protective Order or Restraining Order has been issued.

The confidentiality provision of C.G.S. § 46b-38c(c) should be amended to permit disclosure of information to prosecutors regarding possession of handgun permits and possession of handguns by persons subject to Protective Orders and Restraining Orders. This confidentiality provision of C.G.S. § 46b-38c(c) should be further amended to permit disclosure of information to OVA in order to carry out the OVA’s statutory requirement to “[e]valuate the delivery of services to victims by state agencies and those entities that provide services to victims . . . .” C.G.S. § 46a-13c(1).

### **Victim’s Private Attorney**

Josephine Giaimo retained the professional services of a private attorney to represent her interests in an action for dissolution of marriage. At a meeting with this attorney on May 15, 2000, prior to her involvement with any Court or law enforcement agency, Josephine Giaimo told her attorney that Frank Cosenza had guns. This

attorney also represented Josephine Giaimo when she sought an ex parte restraining order. The attorney had a duty to provide competent representation and to act with reasonable diligence and promptness in representing Josephine Giaimo. See, Rules 1.1, 1.3 of the Rules of Professional Conduct.

This attorney drafted an affidavit for Josephine Giaimo on a Superior Court form entitled “Affidavit-Relief from Abuse” and filed this affidavit along with other papers in the New Haven Superior Court. This affidavit did not mention Josephine Giaimo’s knowledge of Cosenza’s possession of handguns.

The attorney had information from Josephine Giaimo regarding Cosenza’s possession of handguns and he failed to communicate this information to the Court. The Court had the authority to find Cosenza in contempt of its orders and “impose such sanctions as the court deems appropriate”. C.G.S. § 46b-15(g). The attorney failed to ensure that Cosenza’s handguns were transferred or surrendered by July 10, 2000 (two business days after the issuance of the Ex Parte Restraining Order). A Motion for Contempt could have been filed as early as July 11, 2000.

At the hearing regarding the Restraining Order on July 19, 2000, the attorney again failed to communicate crucial information to the Court concerning Cosenza’s possession of handguns as well as other violations of the Ex Parte Restraining Order that occurred after the Court issued the Orders on July 6, 2000.

Because the attorney failed to communicate appropriate information to the Court, and because the Court failed to inquire about Cosenza’s conduct after the date of the issuance of the Ex Parte Restraining Order, there was no sanction imposed by the Court that might have served the interest of victim safety.

### Summary

- Josephine Giaimo retained the professional services of a private attorney to represent her interests in an action for dissolution of marriage. This attorney also represented Josephine Giaimo when she sought an ex parte restraining order. As early as May 15, 2000, prior to her involvement with any Court or law enforcement agency, Josephine Giaimo told her attorney that Frank Cosenza had guns. The attorney had a duty to provide competent representation and to act with reasonable diligence and promptness in representing Josephine Giaimo.
- The attorney had information from Josephine Giaimo regarding Cosenza’s possession of handguns and he failed to communicate this information to the Court. The Court had the authority to find Cosenza in contempt of its orders and “impose such sanctions as the court deems appropriate”. C.G.S. § 46b-15(g). The attorney failed to ensure that Cosenza’s handguns were transferred or surrendered by July 10, 2000 (two business days after the issuance of the Ex Parte Restraining Order). A Motion for Contempt could have been filed as early as July 11, 2000.

- At the hearing regarding the Restraining Order on July 19, 2000, the attorney again failed to communicate crucial information to the Court concerning Cosenza's possession of handguns as well as other violations of the Ex Parte Restraining Order that occurred after the Court issued the Orders on July 6, 2000.
- Because the attorney failed to communicate appropriate information to the Court, and because the Court failed to inquire about Cosenza's conduct after the date of the issuance of the Ex Parte Restraining Order, there was no sanction imposed by the Court that might have served to protect Josephine Giaimo.

## **Analysis of Relevant Statutes:**

### **C.G.S. § 29-36k: Transfer or surrender of pistols or revolvers**

Section 29-36k of the Connecticut General Statutes requires persons who are ineligible to possess a pistol or revolver to transfer the pistol or revolver or surrender the pistol or revolver to the Commissioner of Public Safety within two business days of the event that makes a person ineligible to possess a pistol or revolver. This statute was enacted in 1994 and is the authority for the requirement to transfer/surrender pistols and revolvers which is included in all Restraining Orders and Protective Orders.

One potential problem with the enforcement of this statute is identifying the appropriate jurisdiction. As was the situation in the complaints to the East Haven Police Department by Josephine Giaimo, the subject of the Restraining Order or Protective Order might reside outside of the jurisdiction of the law enforcement agency. There is presently confusion as to whether municipal police officers can or should investigate and enforce the requirements of C.G.S. § 29-36k if the subject of the court order is not within the local jurisdiction.

The OVA recommends that this statute be amended to clarify the issue of jurisdiction **or** that “protocol” be promptly enacted to form a unit with statewide jurisdiction to ensure that persons who become ineligible to possess a pistol or revolver comply with the requirements of C.G.S. § 29-36k. There is presently no protocol and there is inadequate enforcement of the provisions of C.G.S. § 29-36k. The inadequate enforcement of C.G.S. § 29-36k was recognized long before the homicide of Josephine Giaimo as evidenced by P.A. 99-212, Section 10.

### **P.A. 99-212, Section 10: An Act Concerning Firearms Safety**

P.A. 99-212, Section 10 states: “The Commissioner of Public Safety, in conjunction with the Chief State’s Attorney and the Connecticut Police Chief’s Association, shall develop a protocol to ensure that persons who become ineligible to possess a pistol or revolver have, in accordance with section 29-36k of the general statutes, transferred such pistol or revolver to a person eligible to possess such pistol or revolver or have delivered or surrendered such pistol or revolver to said commissioner.” This Public Act became law on October 1, 1999.

P.A. 99-212, Section 10 is a clear attempt by the legislature to address a lack of effectiveness in the intended protections to be provided by Section 29-36k of the Connecticut General Statutes. As of August 24, 2000, the Commissioner of Public Safety had not taken any reasonable steps to develop a protocol to ensure that persons who become ineligible to possess a pistol or revolver have transferred or surrendered pistols and revolvers in their possession.



The statutorily required protocol must be promptly developed and implemented to define the roles and responsibilities of the officials of the numerous agencies and entities that are, or should be, involved in the underlying objective of victim safety and public safety.

### **P.A. 99-212, Section 18: An Act Concerning Firearms Safety**

P.A. 99-212, Section 18 provides a procedure for police officers and prosecutors to apply to a court for a warrant authorizing law enforcement officers to search for firearms in the possession of persons who pose a risk of *imminent* personal injury to themselves or to others, provided no other reasonable alternatives are available to prevent such injury.

This new statutory procedure has been employed by several police agencies with mixed results. This law can or should be a useful tool for law enforcement when persons who are the subject of a restraining order or protective order do not transfer or surrender their firearms within the two day time period. The protection afforded by this law is difficult to utilize because of 1) the requirement that no other reasonable alternatives are available, 2) the requirement that the risk be a risk of “imminent” personal injury, and 3) the existing confusion regarding jurisdiction.

#### *Other Reasonable Alternatives*

The Memorandum of Decision in State v. Avery, (refer to appendix) highlights some of the practical obstacles that police officers and prosecutors may encounter when seeking a warrant pursuant to P.A. 99-212, Section 18. In particular, the requirement that there be no other reasonable alternatives are available to prevent imminent personal injury is an “extremely high standard”. State v. Avery, 1999 Ct. Sup. 15439, 15445; quoting Rep. SanAngelo, 42 H.R. Proc., Pt. 9, 1999 Sess., p. 5354-55. The Avery Court, (Foley, J.) noted that Rep. Lawlor stated that alternatives might include “civil commitment”, “voluntary or consensual search”, and “arrest”. Id. At 1544 – 45, quoting Rep. Lawlor, 42 H.R. Proc., Pt. 9, 1999 Sess., p. 5343, 5394, 5405. “[The police] are obligated to exhaust every other possibility . . .” Id. Rep. Lawlor further remarked that “if the police fail to establish that a lesser alternative does not exist, it negates the ability of the judge to sign that warrant. Id., at 15446, quoting Rep. Lawlor, 42 H.R. Proc., Pt. 9, 1999 Sess., p. 5398 – 99.

The consideration of available alternatives in the matter of Cosenza’s possession of firearms might have included consideration of a civil commitment or a request for a consensual search and seizure of the firearms. Another possible alternative available might have been a Motion for Contempt filed in the Family Court for violating the surrender / transfer provision of the Restraining Order issued by that Court. The feasibility of these possible alternatives is a matter of speculation since no agency or individual explored alternatives.

### *Risk of Imminent Personal Injury*

The inclusion of the word “imminent” in the statutory language creates a difficult burden for the applicant for the warrant. The term “imminent” is not defined in Connecticut statutes. Under the principles of statutory construction, one must apply the ordinary meaning of words in statutes. After citing to various dictionary definitions of the term “imminent”, the Connecticut Supreme Court defined the term “imminent” to include “an element of both immediacy and certainty”. See, Purzycki v. Fairfield, 244 Conn. 101, 117 (1998) (Callahan, C.J., dissenting) (analyzing an exception to the doctrine of governmental immunity). The very fact that applicants have the time to draft and process an application for a search and seizure warrant suggests that the risk of harm may not be certain or immediate. Indeed, the reasonable belief in a risk of certain and immediate harm is a recognized exception to warrant requirements in other circumstances. By contrast, police officers can seize a person and cause such person to be subjected to an emergency examination when the officer “has reasonable cause to believe that a person has psychiatric disabilities and is dangerous to himself or herself or others or gravely disabled, and in need of immediate care and treatment”. C.G.S. § 17a-503(a), as amended by P.A. 00-147. Thus, police officers can seize a person without a showing of “imminent” danger, but police officers must establish a certain and immediate risk of harm to seize pistols and revolvers.

The Legislature should reconsider the appropriateness of imposing a greater burden to justify seizing firearms than the burden required to take persons into custody.

### *Jurisdiction*

In the instant case, police officers and an Assistant State’s Attorney should have known that Cosenza possessed handguns in his New Haven home and that he posed a risk of imminent harm to himself or others. With limited exceptions, none of which apply here, East Haven Police have law enforcement authority within the Town of East Haven. It is unclear whether East Haven Police would have jurisdiction to seek a search and seizure warrant and / or an arrest warrant for the unlawful possession of handguns outside of the Town of East Haven.

The Connecticut State Police Department has statewide jurisdiction and would not have a concern about jurisdiction if the State Police Department was designated to investigate and enforce the transfer / surrender requirements of Protective Orders and Restraining Orders. Additionally, the Connecticut State Police Department is the only agency designated to receive handgun transfer documents and to receive handguns being surrendered pursuant to these Court orders. Protocol calling for the Connecticut State Police Department to assume the responsibility to ensure that persons who are the subjects of Protective/Restraining Orders have transferred or surrendered their handguns within the required time period would be logical and appropriate.

## **SUMMARY OF FINDINGS AND CONCLUSIONS**

Josephine Giaimo was a victim of threatening and abusive conduct by her estranged husband, Frank Cosenza. Josephine Giaimo took appropriate and reasonable steps to address the situation. Almost every agency and person who had professional involvement in the Giaimo/Cosenza problems could have, and should have, done more to protect Josephine Giaimo. This tragedy illustrates the critical need for comprehensive reforms in the delivery of services to victims of domestic violence and threatened domestic violence.

The common failures of the officials involved with the underlying incident related to the failure to document Frank Cosenza's possession of handguns or the failure to investigate or inquire about Cosenza's possession of handguns. Two separate Courts had ordered Cosenza to surrender or transfer handguns. Because of repeated failures to document or inquire about Cosenza's possession of handguns, actions intended to provide security measures for victims were not obtained for Josephine Giaimo.

A private attorney who represented Josephine Giaimo in a Dissolution of Marriage action and an East Haven police officer both received information concerning Cosenza's possession of handguns from reliable sources. Neither the private attorney nor the police officer documented or communicated the information appropriately to permit others to take appropriate steps to enforce the Court Orders to surrender or transfer such handguns.

Several other East Haven police officers, a prosecutor, and an in-court victim advocate all failed to investigate or inquire about Cosenza's possession of handguns. Such an inquiry was reasonable in that all of these persons knew, or should have known, that Cosenza possessed a Connecticut Permit to Carry Pistols and Revolvers. The referenced investigation might have been as simple as asking Josephine Giaimo or Frank Cosenza about Cosenza's possession of handguns, or a check with the Department of Public Safety by a police officer to determine if Cosenza had handguns registered in his name. Cosenza, in fact, had a handgun registered to him since April 16, 1991.

A failure of the Commissioner of Public Safety to implement statutorily required protocol to ensure that persons who become ineligible to possess a pistol or revolver have transferred or surrendered pistols and revolvers in their possession is a serious problem which must be promptly addressed. Such protocol, along with the dedication of appropriate staffing and resources, would require the very type of investigation that was neglected by so many persons in the instant case. Appropriate implementation of such protocol will require cooperation and communication with all law enforcement agencies and other agencies and entities that provide services to victims. The protocol should clarify the roles and responsibilities of the various law enforcement agencies and other service providers in order to eliminate confusion that might contribute to a failure to provide important services and protections to victims.

The OVA recommends training for personnel in all agencies and entities that provide services to victims in order to appropriately communicate the terms of the protocol and to reinforce awareness of the severity of problems related to domestic violence and handguns.

Amendments to existing laws should be proposed to the Legislature to enable law enforcement officers and prosecutors to more efficiently implement the protections that the legislature intended. At a minimum, P.A. 99-212, Sec. 18, should be amended to eliminate confusion and increase effectiveness of intended protection.